

200 KAR 5:305. Performance bonds; forms; payments.

RELATES TO: KRS 45A.190, 45A.195

STATUTORY AUTHORITY: KRS 45A.035, 45A.195

NECESSITY, FUNCTION, AND CONFORMITY: KRS 45A.035 authorizes the Secretary of the Finance and Administration Cabinet to promulgate administrative regulations for the implementation of the Kentucky Model Procurement Code (KRS Chapter 45A). KRS 45A.195(1) requires the secretary to promulgate administrative regulations establishing the form of the bonds required by KRS 45A.180 to 45A.200. This administrative regulation implements the provisions of KRS 45A.190 and 45A.195.

Section 1. A contract shall not be awarded to a contractor who fails or refuses to give bond to the Commonwealth if required as provided by KRS 45A.190.

Section 2. A contractor may be declared in default of a contract with the Commonwealth of Kentucky, and bond forfeited, if it is determined by the purchasing official that the contractor is in breach of the terms and conditions of the contract, including, in contracts for construction services, failure to make timely payment of bills for labor, materials and supplies as evidenced by liens filed against the construction fund by laborers and suppliers pursuant to KRS 376.195 to 376.260, or by letters of indebtedness filed with the purchasing agency evidencing that these bills are due and have not been paid by the contractor.

Section 3. (1) The form of performance and payment bond required to be given by construction contractors pursuant to Sections 1 and 2 of this administrative regulation, including the terms and conditions of the performance and payment bond, shall be published in the Finance and Administration Cabinet "Manual of Policies and Procedures" incorporated by reference as an administrative regulation pursuant to 200 KAR 5:021. The form of bond shall be applicable to, and included in all contracts for construction services if required by KRS 45A.190 and this administrative regulation; except that the bond form or terms may be modified, if in connection with a particular procurement, it is determined, in writing, by the purchasing officer that the modification is reasonably required for the procurement in the best interest of the Commonwealth of Kentucky.

(2) The form of bond required to secure the performance of all other contracts for the purchase of commodities, supplies, equipment or services by the Commonwealth shall be the standard form of performance or payment bond customarily issued by surety companies authorized to do business in Kentucky, plus any additional terms required by the purchasing agency and agreed to by the surety. (5 Ky.R. 572; Am. 945; eff. 7-17-79; 18 Ky.R. 1356; eff. 1-10-92; 30 Ky.R. 670; 1461; eff. 1-5-2004.)